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10/810,110	03/26/2004	Robert Hickman	04046	8030

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EXAMINER

SALDANO, LISA M

ART UNIT PAPER NUMBER

3673

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/810,110

Applicant(s)

HICKMAN, ROBERT

Examiner

Lisa M. Saldano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 18 and 27-29 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-6 is/are allowed.
- 6) ☒ Claim(s) 7-17, 19-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-29 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/26/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-17 and 19-26, drawn to a bedding cover and a pillow sham, classified in class 5, subclass 502.
  - II. Claims 18 and 27-29, drawn to a method of making a bedding cover, classified in class 112, subclass 475.08.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions of Group II and Group I are related as process of making and product made.

The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process, such as by adhering the panels together by adhesive, instead of stitching the pieces to one another.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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4. During a telephone conversation with Charles Meroni on February 1, 2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-17 and 19-26. Affirmation of this election must be made by applicant in replying to this Office action. Claims 18 and 27-29 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 19, 20 and 25-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

More specifically, the applicant recited limitations directed to “a first fastener a first fastener for securing a second hemmed edge of the back panel to a second hemmed edge of the front panel, the second hemmed edge of the back panel and second hemmed edge of the front panel substantially covering the first fastener when the first fastener is in a closed position; and a second fastener for securing a third hemmed edge of the back panel to a third hemmed edge of the front panel, the third hemmed edge of the back panel and third hemmed edge of the front panel substantially covering the second fastener when the second fastener is in a closed position.” It is not apparent from the drawings that a fastener secures a second hemmed edge of the back panel to a second hemmed edge of the front panel such that the second hemmed edge of the back panel and the second hemmed edge of the front panel substantially cover the first

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fastener when the first fastener is in the closed position. Furthermore, it is not clear how the second fastener does the same thing with third hemmed edges. This claim language is confusing and the drawings do not appear assist one to fully understand the claim language.

These claims have not been provided a prior art examination as it is not clear what the applicant intends to claim.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 14-16 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Chuang (6,032,308).

Regarding claims 14, 15 and 21, Chuang discloses a protective comforted cover bag that is capable for use as a pillow sham. The invention comprises a multi-sided access flap 26 providing access to a pocket (see Figs.1&6), a plurality of fasteners 321 with at least two fasteners positioned in perpendicular relationship, and at least one hiding flap (261,262,263) covering the fasteners. The hook and loop fasteners illustrated in Fig.6 are moveable and connected to the access flap 26.

Regarding claim 16, Chuang discloses that the front and back panels or the first and second cover sheets 21,22 are sewn (stitched) peripherally together (see column 3, lines 35-50).

Regarding claim 17, Chuang discloses that the fasteners may be

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chuang (6,032,308) in further view of Temple (2,736,043).

Chuang discloses a protective comforted cover bag that is capable for use as a pillow sham. The invention comprises a multi-sided access flap 26 providing access to a pocket (see Figs.1&6), a plurality of fasteners 321 with at least two fasteners 30 positioned in perpendicular relationship, and at least one hiding flap (261,262,263) covering the fasteners. The hook and loop fasteners 321 illustrated in Fig.6 are moveable and connected to the access flap 26. Chuang further discloses that the fastener may comprise a zipper 31 (see Fig.1).

However, Chuang fails to disclose that the hiding flaps are provided by a back panel to cover the fastener.

Temple discloses a bedsheet blanket attachment device comprising flap portions 14,15 that can be considered back panels of the assembly. The flap portions function as hiding flaps for the various fasteners used by Temple to secure sheets 10 and blankets 20 to the attachment device.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Chuang to comprise hiding flaps on a back panel, as taught by

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Temple, because Chuang already provides motivation for hiding flaps as disclosed above.

Temple merely provides a different way of achieving the same objective by creating the hiding flap from a different part of the bedding device.

11. Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chuang in view of Temple, as applied to claim 9 above, and further in view of Casey (4,631,765).

Chuang and Temple disclose inventions as described above.

However, Chuang and Temple fail to explicitly disclose provision of a flange about the pocket of the device.

Casey discloses a modular covering and a method of assembling the same comprising front and back panels covers 12,13 that are stitched together providing a flange about a pocket (see Figs.3&4). Casey discloses that the peripheral edges of the panels are hemmed (see Fig.4).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify either inventions of Chuang or Temple to comprise a stitched flange, as taught by Casey, because the flange provides a more finished look to the bed covering thereby making it more aesthetically pleasing.

12. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chuang, as applied to claim 16 above.

Chuang discloses a protective comforted cover bag that is capable for use as a pillow sham. The invention comprises a multi-sided access flap 26 providing access to a pocket (see Figs.1&6), a plurality of fasteners 321 with at least two fasteners 30 positioned in perpendicular

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relationship, and at least one hiding flap (261,262,263) covering the fasteners. The hook and loop fasteners 321 illustrated in Fig.6 are moveable and connected to the access flap 26. Chuang further discloses that the fastener may comprise a zipper 31 (see Fig.1)

Although Chuang fails to explicitly disclose that the invention may comprise a plurality of zippers, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide a plurality of zippers, one for opening only each side, as taught by Chuang's use of the hook and loop fasteners providing capability to open just one side.

13. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chuang, as applied to claim 21 above, in further view of Temple (2,736,043).

Chuang discloses a protective comforted cover bag that is capable for use as a pillow sham. The invention comprises a multi-sided access flap 26 providing access to a pocket (see Figs.1&6), a plurality of fasteners 321 with at least two fasteners 30 positioned in perpendicular relationship, and at least one hiding flap (261,262,263) covering the fasteners. The hook and loop fasteners 321 illustrated in Fig.6 are moveable and connected to the access flap 26. Chuang further discloses that the fastener may comprise a zipper 31 (see Fig.1).

However, Chuang fails to disclose that the hiding flaps are provided by a backpanel to cover the fastener.

Temple discloses a bedsheet blanket attachment device comprising flap portions 14,15 that can be considered back panels of the assembly. The flap portions function as hiding flaps for the various fasteners used by Temple to secure sheets 10 and blankets 20 to the attachment device.



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It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Chuang to comprise hiding flaps on a back panel, as taught by Temple, because Chuang already provides motivation for hiding flaps as disclosed above. Temple merely provides a different way of achieving the same objective by creating the hiding flap from a different part of the bedding device.

14. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chuang in view of Temple, as applied to claim 22 above, and further in view of Casey (4,631,765).

Chuang and Temple disclose inventions as described above.

Regarding claim 24, Chuang discloses a multi-sided access flap 26 providing access to a pocket (see Figs.1&6), a plurality of fasteners 321 with at least two fasteners 30 positioned in perpendicular relationship, and at least one hiding flap (261,262,263) covering the fasteners.

However, Chuang and Temple fail to explicitly disclose provision of a flange about the pocket of the device.

Casey discloses a modular covering and a method of assembling the same comprising front and back panels covers 12,13 that are stitched together providing a flange about a pocket (see Figs.3&4). Casey discloses that the peripheral edges of the panels are hemmed (see Fig.4).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify either inventions of Chuang or Temple to comprise a stitched flange, as taught by Casey, because the flange provides a more finished look to the bed covering thereby making it more aesthetically pleasing.

*Allowable Subject Matter*

15. Claims 1-6 would be allowed over the prior art of record.

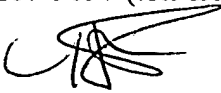
*Conclusion*

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Zheng (6,073,283), Baumgartel et al, Tang (4,903,361), Putka, Jr. (5,279,009) and Lehigh (2,637,860) disclose features that are pertinent to the present application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lisa M. Saldano whose telephone number is 703-605-1167. The examiner can normally be reached on Monday-Friday, 8:30am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on 703-308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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